

**Before the
Federal Communications Commission
Washington, DC 20554**

Application by SBC Communications Inc.,)	
Southwestern Bell Telephone Company,)	CC Docket No. 00-65
and Southwestern Bell Communications)	
Services, Inc. d/b/a Southwestern Bell Long)	
Distance for Provision of In-Region)	
InterLATA Services in Texas)	

**COMMENTS OF
Z-TEL COMMUNICATIONS, INC.**

Z-Tel Communications, Inc. ("Z-Tel"), by its attorneys, hereby submits its comments in response to the Commission's Public Notice (DA 00-750) in the above-captioned proceeding. The Public Notice invites interested parties to comment on the Application of SBC Communications Inc., *et al.* (collectively "SWBT") to provide in-region interLATA services in the State of Texas, pursuant to section 271 of the Communications Act of 1934, as amended.

I. INTRODUCTION AND SUMMARY

Z-Tel is a Tampa, Florida-based integrated communications provider that offers local, long distance, and enhanced services to residential consumers. With Z-Tel's service offering, Texas consumers receive a bundled package of long distance, unlimited local calling, voicemail, caller ID, "follow-me," and a number of other enhanced services. Consumers also may purchase dial-up Internet access as part of their Z-Tel service. In December of 1999, Z-Tel launched its residential service offering in Waco and Corpus Christi, Texas, and in March of 2000, Z-Tel began marketing its offering to residential consumers throughout the SWBT service territory in Texas.

Z-Tel provides local exchange and exchange access services using the combination of unbundled network elements ("UNEs") known as the UNE Platform, which the

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Commission has described as a combination of the unbundled loop, switching, and transport elements.¹ Z-Tel provides the long distance and enhanced services portions of its package. Z-Tel first began providing its integrated local, long distance, and enhanced services product in New York in June of 1999, and Z-Tel recently began offering service in Massachusetts and Pennsylvania.

Consumer response to Z-Tel's residential service offering has been extremely favorable. Indeed, on April 17, 2000, Z-Tel announced that its installed subscriber count surpassed 100,000 residential consumers. To meet the strong demand in residential markets for innovative, integrated service offerings, Z-Tel plans to roll out its services throughout the nation's top 100 metropolitan statistical areas by the end of 2001.

Although Z-Tel has experienced success with consumers in the residential market place, Z-Tel continues to encounter service-affecting problems that stem from SWBT's: (1) failure to provide adequate access to its operations support systems ("OSS") and (2) insistence on maintaining anticompetitive interconnection policies.² Availability restraints on SWBT's OSS substantially limit Z-Tel's ability to provision the order volumes received by Z-Tel.³ SWBT's recent effort to "renegotiate" the Texas 271 Agreement ("T2A"), combined with its

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, ¶ 12 (rel. November 5, 1999).

² *See generally Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Docket No. 00-4, Comments of Z-Tel Communications, Inc. (filed Jan. 31, 2000). Z-Tel understands that the Commission is incorporating in this proceeding the record from CC Docket No. 00-4. For clarity's sake, however, Z-Tel notes that SWBT has not acted to resolve the issues raised by Z-Tel in that proceeding.

³ Z-Tel did not raise this OSS issue in its January 31, 2000 comments. At the time comments in CC Docket 00-4 were filed, Z-Tel had little operational experience with SWBT in Texas.

unilateral refusal to make certain effective agreements available for adoption pursuant to section 252(i) of the Act demonstrates that granting section 271 authority to SWBT at this time would contravene the public interest. For these reasons, the Commission should reject SWBT's amended Application to provide in-region, interLATA services in the State of Texas until such time as these issues are addressed.

II. LIMITS ON THE AVAILABILITY OF SWBT'S OSS VIOLATES THE COMPETITIVE CHECKLIST

Section 271(c)(2)(B)(ii) requires a BOC to provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)."⁴ The Commission "has determined that access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable."⁵ Thus, in order to demonstrate compliance with the competitive checklist, a BOC must show that it is providing just, reasonable, and nondiscriminatory access to OSS.

In analyzing whether a Bell Operating Company ("BOC") is providing adequate OSS access, the Commission analyzes each of the primary OSS functions – pre-ordering, ordering, provisioning, maintenance and repair, and billing – through a two-part inquiry. "First, [the Commission] determine[s] whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions.... [The

⁴ 47 U.S.C. § 271(c)(2)(B)(ii).

⁵ *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, ¶ 84 (rel. Dec. 22, 1999) ("New York 271 Order").

Commission] next assess[es] whether the OSS functions that the BOC has deployed are operationally ready as a practical matter.”⁶ SWBT has failed to meet this standard.

In Z-Tel’s view, SWBT does not provide competitors with sufficient access to its OSS. Although Z-Tel believes that the quality of SWBT’s systems is adequate, SWBT limits the availability of these systems to certain prescribed hours. Z-Tel’s general business practice is to run three shifts of provisioning personnel, so that Z-Tel can submit orders to a BOC 24 hours a day, seven days a week. This approach works well in the Bell Atlantic territory, where Bell Atlantic provides carriers with “24x7” access to its OSS. In Texas, by contrast, Z-Tel is unable to utilize this approach due to time restrictions on SWBT’s OSS.

Z-Tel is not suggesting that SWBT should be required to staff its operations centers 24 hours a day, seven days a week to satisfy Z-Tel’s provisioning needs. Rather, Z-Tel merely needs this type of access to SWBT’s pre-order and order applications to submit orders. SWBT would not need to respond to Z-Tel’s orders during off-hours. Z-Tel simply needs the ability to submit orders to SWBT in the same manner in which it submits orders to Bell Atlantic.

At bottom, SWBT’s current OSS access restrictions demonstrate that it is not providing adequate access to its OSS in violation of the competitive checklist. If SWBT were to expand the availability of its OSS, consistent with that of Bell Atlantic, Z-Tel could support a finding that SWBT is indeed providing OSS access in Texas consistent with the requirements of section 271.

⁶ *Id.*, ¶ 88 (emphasis added) (citations omitted) (internal quotations omitted).

**III. SWBT'S EFFORT TO LIMIT COMPETITION THROUGH
WITHHOLDING INTERCONNECTION AGREEMENTS FROM
COMPETITORS DEMONSTRATES THAT GRANT OF ITS
APPLICATION WOULD CONTRAVENE THE PUBLIC INTEREST**

The Commission's section 271 review also involves a public interest analysis pursuant to section 271(d)(3)(C).⁷ The Commission has noted that the public interest provision contained in section 271 "grants the Commission broad authority to identify and weigh all relevant factors in determining whether BOC entry into a particular in-region, interLATA market is consistent with public interest."⁸ A fundamental prerequisite to establishing a carrier-to-carrier relationship with an incumbent is the execution of an interconnection agreement through negotiation, arbitration, or adoption. SWBT consistently has attempted to limit the ability of competitors to adopt interconnection agreements, and in direct contravention of the public interest.

As Z-Tel noted in its January 31, 2000 comments in CC Docket 00-4, SWBT refused Z-Tel's request to adopt the interconnection agreement between SWBT and AT&T in Texas, in spite of the fact that SWBT continues to this day to provide service to AT&T pursuant to this agreement. Rather than litigate that issue, Z-Tel adopted the T2A in October of 1999 so that it could continue with its plans to enter local markets in Texas that December. Even though Z-Tel would prefer to operate under the AT&T agreement, the T2A, as a general matter, has served Z-Tel's needs in Texas. On April 12, 2000, however, SWBT informed Z-Tel that it wished to renegotiate a successor agreement to the T2A.

⁷ 47 U.S.C. § 271(d)(3)(C).

⁸ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum and Opinion and Order, 12 FCC Rcd 20543, ¶ 343 (1997)

By denying access to the AT&T agreement and noticing the T2A for termination, SWBT has demonstrated that it is attempting to foreclose to the greatest extent practicable the ability of competitors to exercise their section 252(i) rights to adopt arbitrated interconnection agreements. To the extent the SWBT can prevent competitors from adopting arbitrated agreements, such as the AT&T agreement and the T2A, SWBT can force competitors into negotiation and arbitration. Because SWBT at best is a reluctant supplier of interconnection and network elements to competitors, the interconnection agreement negotiation process typically results in a substantial number of disputed issues, which can be resolved fairly only through arbitration before state public utility commissions. Smaller carriers, such as Z-Tel, simply lack the legal resources necessary to arbitrate interconnection agreements on a state-by-state basis to obtain reasonable terms and conditions.

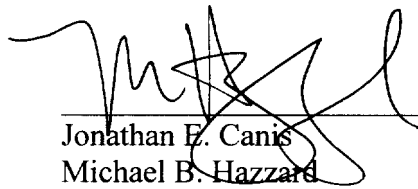
Section 252(i) was designed specifically to level the playing field for all carriers by permitting the adoption of existing interconnection agreements. SWBT has taken direct steps to foreclose competitors from exercising this right in order to limit the proliferation of competition in its local markets, and as such, SWBT's Application to provide in-region, interLATA services in Texas is inconsistent with the public interest.

IV. CONCLUSION

For these reasons, the Commission should deny SWBT's Application to provide in-region, interLATA services in Texas until such time as SWBT addresses the issues presented in these comments and those filed by Z-Tel on January 31, 2000 in CC Docket No 00-4.

Respectfully submitted,

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April 26, 2000

CERTIFICATE OF SERVICE

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